

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROGER ANTHONY ETKINS,	)	
	)	
Plaintiff,	)	Case No. 1:10-cv-216-SJM-SPB
	)	
v.	)	
	)	
JUDY GLENN, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM JUDGMENT ORDER**

Plaintiff's complaint in this civil rights action was received by the Clerk of Court on September 1, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on October 18, 2011 [33], recommends that Defendants' motion to dismiss the complaint or, in the alternative, for summary judgment [21] be granted and that the case be dismissed. The Plaintiff filed objections [34] on November 4, 2011. Having considered de novo the Defendants' pending motion in light of the Magistrate Judge's Report and Recommendation and Plaintiff's objections, this Court concludes that the Defendants' motion should be granted in part. Specifically, the Court will adopt the R&R insofar as it pertains to Plaintiffs' *Bivens* actions against Defendants Glenn and Smith. Insofar as this aspect of the R&R is concerned, the Court finds the Plaintiff's objections to be lacking in merit. Accordingly, summary judgment will be entered in favor of Defendants Glenn and Smith.

With respect to Defendant Asp, the Court will adopt the R&R insofar as it pertains to Plaintiff's Eighth Amendment claim premised upon the alleged denial of a knee wrap. However, to the extent Plaintiff's *Bivens* claim is premised upon the alleged denial of pain medication, the Court finds that an apparent dispute exists at this juncture with respect to the issue of when Plaintiff actually requested the pain medication in question, making dismissal and/or summary judgment inappropriate at this time. Accordingly, the Court will decline to adopt the R&R to the extent it recommends a dismissal and/or summary judgment relative to Plaintiff's Eighth Amendment claim premised upon the alleged denial of pain medication. In this limited respect the Defendants' motion will be denied and the Plaintiff's case will be permitted to go forward. Accordingly, the following order is entered:

AND NOW, this 22nd Day of November, 2011, upon de novo review of the complaint and documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto,

IT IS ORDERED that the Defendants' motion to dismiss the complaint or, in the alternative, for summary judgment [21] shall be, and hereby is, GRANTED in part and DENIED in part as follows:

1. Said motion is DENIED insofar as it pertains to Plaintiff's Eighth Amendment claim premised upon the alleged denial of pain medication; and
2. Said motion is GRANTED in all other respects.

In light of the foregoing, JUDGMENT is hereby entered in favor of Defendants Glenn and Smith and against Plaintiff. In addition, JUDGMENT is hereby entered in favor of Defendant Asp and against Plaintiff with respect to Plaintiff's Eighth Amendment claim premised upon the alleged denial of a knee wrap.

The Report and Recommendation of Magistrate Judge Baxter, filed on October 18, 2011 [33], is adopted in part as the opinion of this Court to the extent set forth herein.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN  
United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter